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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STEVEN DE COSTA, in his)	CIVIL NO. 03-00598 DAE/LEK
representative capacity as)	
Chairperson of the Board of)	DEFENDANT'S CONCISE
Trustees of United Public Workers,)	STATEMENT OF MATERIAL
AFSCME Local 646, AFL-CIO,)	FACTS IN SUPPORT OF
Mutual Aid Fund Trust, Real Party)	DEFENDANT'S RENEWED
in Interest, United Public Workers,)	MOTION FOR SUMMARY
Local 646, AFL-CIO,)	JUDGMENT; AFFIDAVIT OF
)	ERIC A. SEITZ; EXHIBITS 1-7;
Plaintiffs,)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
GARY W. RODRIGUES,)	
)	
Defendant.)	
_____)	(Trial: March 11, 2008)

DEFENDANT'S CONCISE STATEMENT OF MATERIAL
FACTS IN SUPPORT OF DEFENDANT'S
RENEWED MOTION FOR SUMMARY JUDGMENT

Defendant GARY W. RODRIGUES, by and through his undersigned attorneys, herein submit the following Concise Statement of Material Facts in support of his Renewed Motion for Summary Judgment pursuant to LR. 56.1 of the Local Rules of Practice for the United States District Court for the District of Hawaii.

Facts

Evidentiary Support

- | | |
|---|--|
| 1. The Mutual Aid Fund Trust was created pursuant to the "Declaration of 501(c)(9) Trust by UPW Local 646, AFSME, AFL-CIO" executed on July 27, 1984. | Exhibit 2, attached to Defendant's Concise Statement of Material Facts, filed March 28, 2007. |
| 2. There has been no definitive determination that the Mutual Aid Fund Trust is covered by E.R.I.S.A. | Exhibit 1, attached to Affidavit of Eric A. Seitz, Transcript of Deposition of Dayton Nakanelua, taken on October 16, 2007, at pp. 27-30. |
| 3. Rodrigues was informed that nothing limited the M.A.F. to invest its' funds in banks and savings and loans. | Exhibit 2, attached to Affidavit of Eric A. Seitz. |
| 4. At its meeting on June 21, 1994, the M.A.F. trustees authorized a minimum investment of \$500,000.00 to be processed through "The Hewitt Company." | Exhibit 3, attached to Affidavit of Eric A. Seitz, Minutes, Mutual Aid fund Trustees Meeting, Tuesday, June 21, 1994; Cf. Affidavit of Gary W. Rodrigues dated March 22, 2007, at ¶2, attached to Defendant's Concise Statement of Material Facts, filed March 28, 2007. |

5. At the time he was retained by the M.A.F. Mr. Hewitt was affiliated with Smith Barney, a well known and highly reputable investment firm, and who was highly recommended on the basis of his investment services to other entities.

Affidavit of Gary W. Rodrigues dated March 22, 2007, at ¶3, attached to Defendant's Concise Statement of Material Facts, filed March 28, 2007.

6. On or about September, 1999, when Best Rescue defaulted on payments owned on their promissory notes, by letter dated December 15, 1999, Rodrigues requested that all of M.A.F.'s investments in Best Rescue, including interest, be returned.

Exhibit 15, attached to Plaintiff's Opposition to Defendant's Concise Statement of Material Facts, filed May 4, 2007.

7. On January 31, 2000 the M.A.F. filed a lawsuit against Best Rescue for defaulting on amounts owed on promissory notes aggregating \$1,100,000 as of December 31, 1999.

Exhibit D, independent auditor's report dated February 16, 2000, at p. 5, attached to Plaintiff's Opposition to Defendant's Concise Statement of Material Facts, filed May 4, 2007.

8. The M.A.F. contends that Elizabeth Ho authorized the filing of the instant complaint on behalf of the M.A.F. in November, 2003, and the instant complaint was filed on October 23, 2003.

Declaration of Dayton Nakanelua, attached to Plaintiff's Memorandum in Opposition to Defendant Gary W. Rodrigues' Motion to Dismiss, Filed January 16, 2004.

9. Pursuant to a stipulated protective order filed July 31, 2007, Plaintiff disclosed that the amount of its settlement of claims against Albert Hewitt via a copy of a settlement check dated October 6, 2000.

Exhibit 4, attached to Affidavit of Eric A. Seitz.

10. Steven DeCosta testified at his oral deposition taken on September 28, 2007. Exhibit 5, attached to Affidavit of Eric A. Seitz.
11. Current M.A.F. trustees Alison Leong and Craig Yugawa were serving as M.A.F. trustees in February 1999. Exhibit A, attached to Plaintiff's Opposition to Defendant's Concise Statement of Material Facts, filed May 4, 2007.
12. By June 1999 M.A.F. trustees knew of the trust's investment of \$250,000 and its terms at the time of their meeting on June 19, 1999, and that the M.A.F. was paying UPW "a monthly fee of \$2,000 for processing member claims, rent, computer maintenance, supplies and utilities." Exhibit B, independent auditor's report dated March 30, 1999, at "Note 2 - Note Receivable," and "Note 5 - UPW administrative service fees," attached to Plaintiff's Opposition to Defendant's Concise Statement of Material Facts, filed May 4, 2007.
13. On January 31, 2000 the M.A.F. filed a law suit against Best Rescue arising from the transactions which form the bases for Plaintiff's claims. Exhibit D, independent auditor's report dated February 16, 2000, at p.1, attached to Plaintiff's Opposition to Defendant's Concise Statement of Material Facts, filed May 4, 2007.
14. Albert Hewitt testified at his oral deposition taken by telephone on March 6, 2007. Exhibit 3, attached to Defendant's Concise Statement of Material Facts, filed March 28, 2007.
15. George Yasumoto testified at his oral deposition taken on September 28, 2007. Exhibit 5, attached to Affidavit of Eric A. Seitz.
16. Alison Leong testified at her oral deposition taken on September 28, 2007. Exhibit 6, attached to Affidavit of Eric A. Seitz.

17. Dayton Nakanelua testified at his Exhibit 1, attached to Affidavit of Eric
oral deposition taken on October 16, A. Seitz.
2007.

DATED: Honolulu, Hawai'i, October 24, 2007.

/s/ Eric A. Seitz
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Attorneys for Defendant
Gary W. Rodrigues